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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	GEN Docket No. 90-314
)	ET Docket No. 92-100
Amendment of the Commission's)	
Rules to Establish New Personal)	RM-7140, RM-7175,
Communications Services)	RM-7617, RM-7618,
)	RM-7760, RM-7782,
)	RM-7860, RM-7977,
)	RM-7978, RM-7979,
)	RM-7980
)	
)	PP-35 through PP-40,
)	PP-79 through PP-85

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**COMMENTS OF THE PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

The Public Service Commission of the District of Columbia (D.C. PSC), pursuant to the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking and Tentative Decision, FCC 92-333, released August 14, 1992 (NPRM), hereby files its comments in the above-referenced proceeding.

I. INTRODUCTION

In the NPRM, the FCC took a number of steps to implement personal communications services (PCS), and asked for comment on a number of other issues. Among the issues for which further comment was sought are those relating to state regulation of PCS. Among other things, the NPRM seeks comment on whether the FCC should classify PCS as common carriage and whether it should preempt state and local regulation of PCS with regard to entry, rates and interconnection provisions. NPRM at paras. 94-103.

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The D.C. PSC maintains that the FCC should treat any PCS which is generally available to the public as common carrier service, and that state regulation of intrastate rates for interconnection or service to the public should not be preempted.

II. MOST PCS SHOULD BE TREATED AS COMMON CARRIAGE

The NPRM, relying on the FCC's interpretation of 47 U.S.C. §332(c), claims that any PCS that does not resell interconnected telephone service for a profit is not common carrier service and cannot be regulated by state utility commissions. Id. at para. 95. The D.C. PSC is of the view that this interpretation is far too broad.

The legislative history of Section 332(c) of the Communications Act makes clear that private land mobile carriers, which are exempted from common carrier regulation, "do not include common carrier operations like the the new cellular systems." See Statement of Mr. Goldwater, for himself, Mr. Packwood, Mr. Schmidt, Mr. Pressler, Mr. Stevens, Mr. Cannon, Mr. Hollings, and Mr. Inouye upon introduction of S. 929, April 8, 1981, 127 Cong. Rec. S3702-03 (daily ed. April 8, 1981). The purpose behind the interconnection restrictions contained in Section 332 is to "assure that [private carrier] frequencies allocated essentially for purposes of providing dispatch services are not significantly used to provide common carrier message service [like cellular]." H.R. Rep. No. 76, 97th Cong., 2d. Sess. 56, reprinted in 1981 U.S. Code Cong. and Ad. News 2261, 2300. According to the Conference report, "[t]he basic distinction set out in this legislation is a functional one; i.e.,

whether or not a particular entity is engaged functionally in the provision of telephone service or facilities of a common carrier." House Report at 55 (emphasis added). While the legislation exempted private land mobile services from state regulation, the FCC has ruled that private land mobile radio services are limited to services provided by or for eligible end users, i.e., similarly situated users in defined user groups, and are not available to the general public. Amendment of Part 90 of the Commission's Rules to Expand Eligibility and Shared Use Criteria in the Private Land Mobile Service, PR Docket No. 89-45, Notice of Proposed Rulemaking (FCC 89-70) released March 28, 1989 at para. 4; Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules Regarding the Establishment of a Personal Emergency Locator Transmitter Service, PR Docket No. 89-599, Notice of Proposed Rulemaking (FCC 89-342) released December 20, 1989 at para. 17.

If the only issue were whether a licensee resold interconnected telephone service for profit, as the NPRM claims, any offeror of PCS, even a cellular carrier, could claim that it is not reselling at a profit. This is because the FCC has proposed to not exercise federal tariff regulation over PCS licensees and to preempt state regulation. NPRM at para. 97. Moreover, the FCC proposed that all PCS licensees have a federally protected right of interconnection to the public switched telephone network. Id. at para. 99. Under the circumstances, there would be no way to verify whether licensees resold interconnected telephone service at a profit. Nor does the legislation or the legislative history

require that resale be at a profit, only that there be interconnection. Further, since the clear intent of the legislation was to continue to treat cellular service as common carrier service, and since PCS and cellular services are clearly converging, there is no basis for determining that PCS held out to the general public is not a common carrier service. See id. at paras. 26, 63. Of course, some PCS will be limited to specific user groups and not held out to the public, e.g., a PCS used on the customer side of a PBX, which is essentially another form of terminal equipment. But where PCS is used as essentially a substitute for the local exchange telephone network, it should be subject to common carrier rate regulation by the states.

III. STATE REGULATION OF PCS RATES SHOULD BE PERMITTED

States have been permitted to regulate cellular rates, both rates offered by cellular carriers to the public and the rates for interconnection to the switched network offered by local exchange carriers to cellular carriers. There is no evidence that this state regulation, which has been implemented in some, but not other states, has thwarted or impeded the cellular industry. The D.C. PSC submits, therefore, that there is no basis for any different finding for PCS. Among other things, it would be unfair and anticompetitive to preempt state regulation of PCS while state regulation of cellular service is permitted. Of course, if states regulate interconnection rates in a such a manner as to preclude

interconnection of PCS on reasonable terms and conditions, the FCC can always step in pursuant to 47 U.S.C. §201.

Respectfully submitted,

PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

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